

REMARKS/ARGUMENTS

The non-final office action mailed on September 15, 2011, has been reviewed and carefully considered. Reconsideration is respectfully requested.

Amendments to the Claims

Claims 1-3 were pending in the present application prior to this amendment. Claims 1-6 are now pending in the present application; among them, claims 1 and 4 are independent claims.

No claims are amended. Applicants note that MPEP 707.07(a) states that "where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement" a second office action shall not be made final. Therefore, the next Office Action cannot be made final if claims 1-3 are rejected on new grounds.

Claims 4-6 have been added and are supported by original claims 1-3 and FIG. 6 and its accompanying description. No new matter has been added.

Claim Rejections - 35 U.S.C. §102

In the office action (page 4), claim 2 stands rejected under 35 U.S.C. §103(a) as being obvious over Yeong-Dae Yu in view of KR-20-0332944 (Yoon).

The applicants respectfully traverse.

When rejecting claim 1, the Office cites two separate embodiments for the various different features of claim 1. However, for each embodiment, the Office appears to acknowledge features of claim 1 that are not disclosed. To anticipate, the prior art must teach all the claim elements and the claimed arrangement. As detailed in *Net Moneyin, Inc. v. Verisign, Inc.*, 545 F.3d 1359 (Fed. Cir., 2008):

Section 102 embodies the concept of novelty—if a device or process has been previously invented (and disclosed to the public), then it is not new, and therefore the claimed invention is "anticipated" by the prior invention. As we have stated numerous times (language on which VeriSign relies), in order to demonstrate anticipation, the proponent must show "that the four corners of a single, prior art document describe every element of the claimed invention."

Id. at 1370; *citing Xerox Corp. v. 3Com Corp.*, 458 F.3d 1310, 1322 (Fed.Cir.2006) (quoting *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed.Cir.2000)).

Thus, the reliance on multiple distinct embodiments is improper for a Section 102 rejection. See *Ex parte Silviu P. Cucerzan*, Appeal 2009-008190 when stating "it is not enough that the prior art reference discloses part of the claimed invention, which an ordinary artisan might supplement to make the whole, or that it includes multiple, distinct teachings that the artisan might somehow combine to achieve the claimed invention" (quoting *Net MoneyIn* at 1369)" and "Because of the Examiner's reliance on multiple distinct embodiments in Shazeer, we are in accord with the Appellant that the elements of the claimed invention are not identically shown in the reference, arranged as they are in the claims."

With respect the embodiment shown in FIG. 1 of Yu, Yu FIG. 1 does not disclose --a disk-shaped back plate **having a sound hole**--, which the Office appears to concede. As shown in FIG. 1, the back plate 44 in Yu FIG. 1 has no sound hole.

Yu FIG. 1 does not disclose --a first metal ring-- where the disk shaped back plate is --connected electrically to the case through the first metal ring--, which the Office appears to concede.

Additionally, the Office asserts that element 14, which is a vibration plate, of Yu FIG. 1 discloses both the disk-shaped back plate and the diaphragm. However, it is improper to rely on the same structure as disclosing two separate claimed elements. (see *Ex Parte L. Joohn Koutsky and Cole T. Brodersen*, Appeal 1008-0557; *Ex parte Weideman*; *Ex parte Konstant*)

Finally, the Office asserts Yu FIG. 1 discloses

"a diaphragm (vibration plate 12, Figure 1...) inserted into the insulating ring (polar holder 22, Figure 1...) and facing the back plate (12, Figure 1...) while interposing the spacer (18 Figure 1,...). Also see [26], [27], [28]) between the diaphragm (#12 Figure 1...) and the back plate (12 Figure 1...)."

However, element 12 of Yu FIG. cannot be both a back plate and a diaphragm, and as noted above, it is improper to make such an assertion. As described in Yu, element 12 is a vibration plate 12, which constitutes the diaphragm. Also, Yu does not disclose that

its diaphragm is inserted into the polar holder 22 (alleged to be the insulating ring) as is required by claim 1, and instead, there appears to be no part of Yu Fig. 1's diaphragm that is inserted in the polar holder 22.

For at least this reasons, Yu Fig. 1 does not anticipate claim 1.

With respect to the embodiment shown in Yu Fig. 3, Yu Fig. 3 does not disclose - a second metal ring being connected electrically to the diaphragm and supporting mechanically the diaphragm--, which the Office apparently concedes.

Further, contrary to the assertions of the Office action, Yu Fig. 3 does not disclose --a diaphragm inserted into the insulating ring and facing the back plate while interposing the spacer between the diaphragm and the back plate--. The office asserts that element 48 shows the claimed diaphragm, however, element 48 is **not** inserted into element 40, which is alleged to be the insulating ring. As shown in Fig. 3, the vibration plate 48 is in no way inserted into the polar holder 40, and instead is clearly outside of the polar holder 40.

Further, element 45 (alleged to be the claimed spacer) is not interposed between element 48 (alleged to be the claimed diaphragm) and element 44 (alleged to be the claimed backplate). Thus, Yu Fig. 3 does not disclose --a diaphragm inserted into the insulating ring and facing the back plate while interposing the spacer between the diaphragm and the back plate--.

As can be seen from the above, the Office action fails to assert that Yu Fig. 1 teaches all the claim elements and the claimed arrangement of claim 1, or that Yu Fig. 3 teaches all the claim elements and the claimed arrangement of claim 1. Thus, the anticipation rejection is improper, since the reliance on multiple distinct embodiments is improper for a Section 102 rejection.

Finally, as can be seen from the above, claim 1 includes features that are not taught by either of Yu Fig. 1 and Yu Fig. 3. For example, neither Yu Fig. 1 nor Yu Fig. 3 teach or suggest -- a diaphragm inserted into the insulating ring and facing the back plate while interposing the spacer between the diaphragm and the back plate--.

Accordingly, for the reasons set forth above the applicants respectfully submit that claim 1 is patentable over Yu. Claim 3 depends from claim 1 and should be allowable for at least the same reasons as well as the additional features recited in each

of these claims.

Claim Rejections - 35 U.S.C. §103

In the office action (page 4), claim 2 stands rejected under 35 U.S.C. §103(a) as being obvious over Yeong-Dae Yu in view of KR-20-0332944 (Yoon).

Yoon fails to remedy the deficiencies of Yu. Further, claim 2 depends from claim 1. The applicants respectfully submit that this claim is allowable at least by virtue of its dependency as well as the additional features recited therein.

New Claims

New claim 4 is added and includes all the features of claim 1 in addition to other features. The applicants respectfully submit that claim 1 is patentable over the cited references for the reasons set forth above as well as for the additional features recited in this new claim. Claims 5 and 6 depend from claim 4 and mirror claims 2 and 3. The applicants respectfully submit that these claims are allowable at least by virtue of their dependencies.

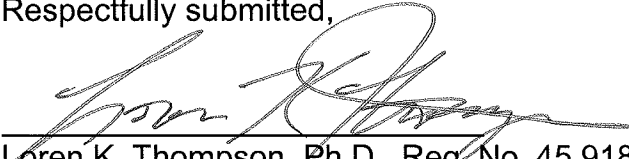
Conclusion

For the reasons set forth above, the applicants respectfully submit that claims 1-6, now pending in this application, are in condition for allowance over the cited references. Accordingly, the applicants respectfully request reconsideration and withdrawal of the outstanding rejections and earnestly solicit an indication of allowable subject matter.

This amendment is considered to be responsive to all points raised in the office action. The examiner is encouraged to contact the undersigned attorney by telephone to expeditiously resolve any remaining questions or concerns.

Dated: Dec 13, 2011

Respectfully submitted,


Loren K. Thompson, Ph.D., Reg. No. 45,918
Ladas & Parry LLP
224 South Michigan Avenue
Suite 1600
Chicago, Illinois 60604
(312) 427-1300